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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,959	02/10/2004	James B. Bingham	TWAV:004USD2	1608
7590 David D. Bahler, Esq. FULBRIGHT & JAWORSKI L.L.P. 600 Congress Avenue, Suite 2400 Austin, TX 78701	08/10/2007		EXAMINER HOLMES, REX R	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 08/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/775,959	BINGHAM ET AL.
	<b>Examiner</b> Rex Holmes	<b>Art Unit</b> 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 May 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 13-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 4/23/04 is being considered by the examiner, as the prior art was included with prior application 09/616,769.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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5. Claims 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franconi et al. (U.S. Pat. 5,186,181 hereinafter "Franconi") in view of Olsen (U.S. Pat. 5,160,828).

6. Regarding claims 13-22, Franconi discloses a radio frequency thermotherapy device containing two or more coils one being the primary and one being the proximate secondary (Col. 29, ll. 23-26), connected to a power supply (Col. 29, ll. 41-49), and a means tuning the RF fields established by the windings that can be located in an external housing (Col. 29, ll. 23-26 & 41-49). Franconi further discloses that the tuning means can be a tuning capacitor or other tuning means that balances the power source to the external load (Col. 20, ll. 37-44; Col. 29, ll. 47-49). Franconi also discloses that the tuning is optimized for each coil to provide therapeutic support based on tissue size, shape, and depth (Col. 8, ll. 33-37). Franconi further discloses that differentiating the number of turns of the coils, changes the energy transfer of the coils (Col. 24, ll. 33-35). Franconi discloses the claimed invention as disclosed in detail above, but fails to disclose that the coil is within a patient conforming garment. However, Olsen discloses that it is known to put a single RF coil within a patient-conforming garment (Figs. 1-4). Olsen further discloses that the housing is releasably connected to the coils (16). Olsen further discloses that the patient garment can be a sock or a glove or a arm/leg warmer which are all elastically deformable to conform to a body (Col. 3, ll. 41-51; Col. 5, ll. 64-68 and Col. 6, ll. 1-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the RF coil as taught by Franconi, with RF coil incorporated into a patient-conforming garment as taught by Olsen, since such a

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modification would provide the dual RF coil with a means for attaching the device to a patient for providing proper heating of the patients body.

7. Examiner notes that a balun is a device for converting a balanced source to an unbalanced source. (Dictionary.com Unabridged (v 1.0.1) Based on the Random House Unabridged Dictionary, © Random House, Inc. 2006.) The tuning capacitors or other tuning means that balance the power source to the external load fall under this limitation.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

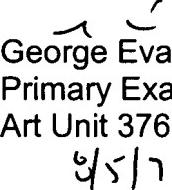
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rex Holmes whose telephone number is 571-272-8827. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300..

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Rex Holmes  
Examiner  
Art Unit 3762

  
George Evanisko  
Primary Examiner  
Art Unit 3762  
